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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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EDWARD SMITH,

ECF CASE

COMPLAINT

Plaintiff,

-against-

CV 09 - 5218
Jury Trial Demanded

THE CITY OF NEW YORK, POLICE OFFICER
MATTHEW BRENNAN (BADGE NO. 8594), JOHN
DOE

Defendants.
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PRELIMINARY STATEMENT

JOHNSON

POLLAK, M.J.

1. This is a civil rights action, brought pursuant to 42 U.S.C. § 1983, alleging misconduct by the City of New York and officers employed by the New York City Police Department ("NYPD") and the New York City Department of Correction ("DOC"). Plaintiff alleges that, on October 24, 2008, NYPD officers subjected him to false arrest, false imprisonment, excessive force, fabrication of evidence, and malicious prosecution in violation of the Fourth, Sixth and Fourteenth Amendments to the Constitution. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of costs and attorney's fees, and such other and further relief as the court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth, Sixth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because defendant City of New York is subject to personal jurisdiction in the Eastern District of New York and the events in question occurred in the Eastern District

PARTIES

4. Plaintiff is a resident of the State of New York.

5. The City of New York is a municipal corporation organized under the laws of the State of New York.

6. Police Officer Matthew Brennan is a member of the NYPD who was involved in the arrest of plaintiff, and the events arising out of plaintiff's arrest, on October 24, 2008. Brennan is liable for directly participating in the acts described herein and for failing to intervene to protect plaintiff from the illegal conduct of his fellow officers. Brennan is sued in his individual capacity.

8. Police Officers John Doe is a member of the NYPD who was involved in the arrest of plaintiff, and the events arising out of plaintiff's arrest, on October 24, 2008.

STATEMENT OF FACTS

9. On October 24, 2008, plaintiff was sitting with his friend Ryan Cherry in front of Mr. Cherry's house at Neptune Avenue and Brighton 4th Street, Brooklyn, New York.

10. Two police officers in plain clothes, including Brennan, ordered plaintiff and Mr. Cherry out of their vehicle. When searched, Mr. Smith was found to be in possession of prescription "Xanax".

11. Plaintiff explained to the officers he had a prescription for the medication and even showed the officers this prescription.

12. Despite the fact that plaintiff 's medicine was prescribed, the officers arrested plaintiff and charged him with Criminal Possession of a Controlled Substance in the Seventh Degree.

13. Officer Brennan and his fellow officer, acting in concert, then unlawfully handcuffed plaintiff in an excessively tight manner causing marks on plaintiff's wrists.

14. The officers ignored plaintiff's requests to loosen the cuffs.

15. Plaintiff was subsequently transported to the 60th Precinct for arrest processing.

16. Plaintiff was subsequently taken to Brooklyn Central Booking to await arraignment.

17. While plaintiff was in Central Booking, Officer Brennan and his fellow officer, acting in concert and with malice, conveyed false information to prosecutors in order to have plaintiff prosecuted for Criminal Possession of a Controlled Substance in the Seventh Degree and other charges.

18. In the evening of October 25, 2008, plaintiff was arraigned in Criminal Court, Kings County and released on his own recognizance.

19. After numerous court appearances, all criminal charges filed against plaintiff were dismissed.

**PLAINTIFF'S FEDERAL CLAIMS AGAINST
OFFICER MATTHEW BRENNAN AND JOHN
DOE**

20. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-20 as if fully set forth herein.

21. The conduct of Matthew Brennan and John Doe, as described herein, amounted to an illegal entry into plaintiff's residence, an illegal search of plaintiff's residence, false arrest, false imprisonment, two illegal strip searches, excessive force, fabrication of evidence, and malicious prosecution in violation of the Fourth, Sixth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

**PLAINTIFF'S FEDERAL CLAIMS AGAINST
THE CITY OF NEW YORK CONCERNING
THE CONDUCT OF ITS POLICE
DEPARTMENT**

22. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-21 as if fully set forth herein.

23. The City of New York, through the actions of the NYPD, directly caused the constitutional violations suffered by plaintiff.

24. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the City, and from the City's own observations, that many of its police officers, including the individual defendants, are unfit officers who have the propensity to commit the acts alleged herein. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline, and monitor the officers and improperly retained and utilized them. Moreover, upon information and belief, the City of New York failed to adequately investigate prior complaints filed against the officers.

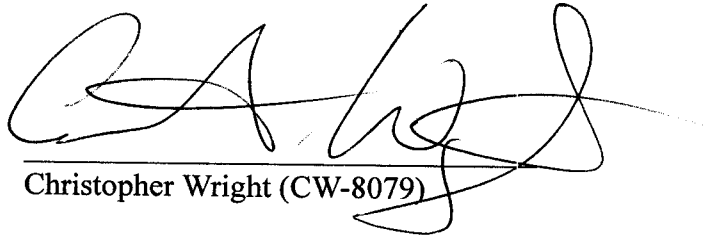
25. The aforesaid conduct by the City of New York violated plaintiff's rights under the Fourth, Sixth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

WHEREFORE, plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Costs, interest and attorney's fees;
- d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

DATED: November 23, 2009
Brooklyn, New York

Christopher Wright
305 Broadway, 14th Floor
New York, New York 10007
(212) 822-1419



Christopher Wright (CW-8079)